IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

CRP.No. 420 of 2007()

AGAINST THE ORDER DATED 06/12/2006 IN EA.12/05 IN EP.9/02 IN OPARB.66/2001 of DISTRICT COURT, PATHANAMTHITTA

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REVN. PETITIONER: CLAIMANT-PETITIONER

KUNJUNJAMMA CHANDY, W/O LAT W.C.CHANDY,
WATTACHERIL HOUSE, THIRUVALLA P.O.,
THUKALASSERI MURI, THIRUVALLA VILLAGE,
THIRUVALLA TALUK.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENTS: DECREE HOLDER/RESPONDENT

INDIA CEMENTS CAPITAL & FINANCE LTD.,
STATUS QUO 38, STERLING ROAD, CHENNAI-600 034,
REPRESENTED BY ITS POAH V.M. THOMAS,
S/O V.V.MATHEW, VELLOKKOTTIL HOUSE,
GANDHI NAGAR P.O., KOTTAYAM.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No. 420 OF 2007

Dated this the 28th May, 2007.

O R D E R

This revision petition is preferred challenging the order of the District Judge, Pathanamthitta in E.A.12/2005 in E.P.9/2002 in O.P(Arb.)66/2001. The decree holder moved an application for attachment and sale of 24 cents of property which belonged to the first judgment debtor. Thereupon the claimant herein moved an application under Order XXI Rule 58 CPC claiming right over the property on the ground that the property had been transferred in her name as per a registered instrument dated 8.10.2002. The executing court, on a consideration found that it is only a sham document and therefore directed to proceed with the execution. At the outset, it has to be stated that the relationship between the judgment debtor and the claimant is that of the son and a mother. The execution of the document was effected after the award was passed. So, it was contended before the executing court that it is a transfer effected with an intent to defeat or delay the creditors and it is hit by Section 53 of the Transfer of Property Act or it is a sham and nominal document. It has to be seen that there is an admission that it is a gift deed. There is no bar in executing a gift deed. But the

circumstances under which the document is executed has to be considered. The award was passed on 30.6.2002 and the gift deed was executed on 8.10.2002. So, prima facie there is an intention behind execution of such a demand. It is nothing but an intention to delay the creditors. Therefore, I am satisfied that under the guise of Ext.A1 the claimant is not entitled to claim any right over the property and therefore, the order of the learned District Judge does not suffer from any infirmity and it is only to be confirmed. Learned counsel for the revision petitioner in fairness prays for time to make the payment before proceeding with the property. Since I am disposing of the matter without notice to the decree holder, it is only just and equitable on my part to direct the revision petitioner to file an application before the executing court and the court shall consider it sympathetically after giving due notice to the decree holder. Such application shall be filed within a period of one month from today and till then sale of the property shall not be done.

Civil Revision Petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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